

**Introduced by Senator Liu**

February 1, 2012

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An act to add Section 634.3 to the Welfare and Institutions Code, relating to ~~attorneys juveniles~~.

LEGISLATIVE COUNSEL'S DIGEST

SB 988, as amended, Liu. ~~Wards: Juveniles:~~ attorney qualifications.

Existing law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. Existing law further provides that a minor has the right to counsel in proceedings to declare the minor a ward of the court. If the minor and his or her parents are indigent, the minor is entitled to appointed counsel.

~~This bill would specify that all minors who are represented by counsel in wardship proceedings are entitled to competent counsel, as defined. Further, this bill would set forth mandatory training and education standards for defense attorneys representing minors in wardship delinquency proceedings. Under this bill, The bill would require that an attorney would be solely responsible for fulfilling these requirements: An attorney would and also be responsible for providing diligent and conscientious advocacy, meeting regularly with his or her client, as well as contacting professionals associated with the client's case, working with other counsel and the court to resolve the case without a contested hearing, and adhering to mandated timelines maintaining a confidential relationship with the client, and consulting with professionals when appropriate for the client's defense. By increasing~~

the duties of these attorneys, including public defenders, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 634.3 is added to the Welfare and  
2     Institutions Code, to read:  
3     634.3. (a) The Legislature finds and declares all of the  
4     following:  
5     (1) As representing minors in the juvenile justice system has  
6     become much more complex, and the potential consequences of  
7     juvenile court involvement have become more severe than when  
8     the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing  
9     with Section 200) was enacted, delinquency attorneys need  
10    specialized skills, education, and training to ensure proper  
11    representation of minors in juvenile delinquency court.  
12    (2) Competent legal representation by defense attorneys is  
13    needed to preserve the integrity of the juvenile justice system,  
14    prevent wrongful judgments, reduce unnecessary incarceration,  
15    and help ensure that minors receive the care, treatment, and  
16    guidance upon which the juvenile justice system is premised.  
17    (3) It is essential that California's juvenile delinquency defense  
18    attorneys have the appropriate knowledge and skills needed to  
19    meet the demands of this increasingly complex area of legal  
20    practice. Advances in brain research demonstrate that children  
21    and adolescents do not possess the same cognitive, emotional,  
22    decisionmaking, and behavioral capacities as adults. Counsel must  
23    ensure that these differences are appropriately recognized in the  
24    attorney-client relationship and defense of the case.  
25    (b) (1) Commencing January 1, 2014, defense attorneys in  
26    delinquency proceedings shall complete at least eight hours of

1 *training approved for minimum continuing legal education credit*  
2 *by an approved State Bar of California agency prior to*  
3 *representing a juvenile for the first time, and an additional eight*  
4 *hours within the regular minimum continuing legal education*  
5 *requirements due per three-year cycle. These training hours may*  
6 *be counted toward the minimum continuing legal education hours*  
7 *required by the State Bar of California. The required eight hours*  
8 *of minimum continuing legal education per three-year cycle shall*  
9 *include developments in juvenile delinquency law, child*  
10 *development, special education, mental health issues, child abuse*  
11 *and neglect, counsel's ethical duties, appellate issues, direct and*  
12 *collateral consequences of court involvement, and how to secure*  
13 *effective rehabilitative resources.*

14 *(2) While public defender offices and agencies contracting to*  
15 *provide representation under Sections 601 and 602 are encouraged*  
16 *to provide training that meets the requirements of paragraph (1),*  
17 *each attorney shall be solely responsible for fulfilling those training*  
18 *and education requirements. District attorneys in delinquency*  
19 *proceedings are encouraged, but not required, to pursue education*  
20 *in the relevant areas.*

21 *(c) A defense attorney representing a minor in any proceeding*  
22 *under Section 601 or 602 shall do all of the following:*

23 *(1) Provide diligent and conscientious advocacy and make*  
24 *rational and informed decisions founded on adequate investigation*  
25 *and preparation.*

26 *(2) Comply with Rule 5.663 of the California Rules of Court.*

27 *(3) Represent the expressed interests of the minor, meet*  
28 *regularly with the minor, and maintain a confidential relationship*  
29 *with the minor. The attorney for the minor shall have sufficient*  
30 *contact with the minor to establish and maintain a meaningful and*  
31 *professional attorney-client relationship.*

32 *(4) Consult with social workers and mental health and other*  
33 *experts when appropriate for the minor's defense, and seek*  
34 *appointment, when appropriate, of those experts pursuant to*  
35 *Sections 730 and 952 of the Evidence Code. Experts appointed*  
36 *pursuant to Sections 730 and 952 of the Evidence Code are agents*  
37 *of the attorney and shall adhere to the attorney-client privilege.*

38 *(d) A defense attorney representing a minor in any proceeding*  
39 *under Section 601 or 602 is not required to do any of the following:*

1     (1) Assume the responsibilities of a probation officer, social  
2 worker, parent, or guardian.

3     (2) Provide nonlegal services to the minor.

4     (3) Represent the minor in any proceeding outside of the  
5 delinquency proceedings.

6     SEC. 2. If the Commission on State Mandates determines that  
7 this act contains costs mandated by the state, reimbursement to  
8 local agencies and school districts for those costs shall be made  
9 pursuant to Part 7 (commencing with Section 17500) of Division  
10 4 of Title 2 of the Government Code.

11     SECTION 1. ~~Section 634.3 is added to the Welfare and~~  
12 ~~Institutions Code, to read:~~

13     ~~634.3. (a) The Legislature finds and declares the following:~~

14     ~~(1) As representing children in the juvenile justice system,~~  
15 ~~particularly in delinquency court, has become much more complex~~  
16 ~~than the practice was a generation ago, there is a greater need for~~  
17 ~~education, training, and resources in this specialized discipline.~~

18     ~~(2) Problems in preparation and representation by attorneys at~~  
19 ~~early stages in the adjudicatory process often result in harmful or~~  
20 ~~less favorable outcomes for children at and after disposition.~~

21     ~~(3) Not only are dependency attorneys required to meet~~  
22 ~~mandatory minimum training and education requirements to certify~~  
23 ~~that they are qualified to represent children in dependency~~  
24 ~~proceedings, but all stakeholders in dependency court are required~~  
25 ~~to meet mandatory minimum education and training requirements~~  
26 ~~and standards of practice before working in dependency court and~~  
27 ~~on a continuing basis.~~

28     ~~(4) It is incumbent that California's juvenile delinquency~~  
29 ~~attorneys have the appropriate skill set to meet demands of this~~  
30 ~~growing complex area of legal practice.~~

31     ~~(b) For purposes of this section, "competent counsel" means an~~  
32 ~~attorney who meets all of the following criteria:~~

33     ~~(1) Is a member in good standing of the State Bar of California.~~

34     ~~(2) Has participated in training in juvenile law for proceedings~~  
35 ~~under Sections 601 and 602 as required by subdivision (d).~~

36     ~~(3) Demonstrates adequate forensic skills, knowledge, and~~  
37 ~~comprehension of the statutory scheme, the purposes and goals of~~  
38 ~~proceedings under Sections 601 and 602, the specific statutes, the~~  
39 ~~rules of court, and cases relevant to those proceedings, and~~  
40 ~~procedures for filing law and motion matters in juvenile court.~~

1 ~~(e) Every minor in a proceeding under Section 601 or 602 who~~  
2 ~~is represented by an attorney is entitled to competent counsel.~~

3 ~~(d) Only attorneys who have completed a minimum of eight~~  
4 ~~hours of training or education in the area of wardship proceedings~~  
5 ~~may be appointed to represent minors in juvenile court under~~  
6 ~~Sections 601 and 602. Attorneys must complete at least eight hours~~  
7 ~~of education every three years related to proceedings under Sections~~  
8 ~~601 and 602. In addition to a summary of wardship law and related~~  
9 ~~statutes and cases, training and education for attorneys must include~~  
10 ~~information on child development, special education, mental health~~  
11 ~~issues, child abuse and neglect, substance abuse, domestic violence,~~  
12 ~~and family reunification and preservation.~~

13 ~~(e) An attorney shall be solely responsible for fulfilling the~~  
14 ~~training and education requirements. The attorney's employer shall~~  
15 ~~not be responsible for the training of attorneys and may hire~~  
16 ~~attorneys that have not been trained.~~

17 ~~(f) Attorneys or their agents shall meet regularly with clients,~~  
18 ~~regardless of the child's age or ability to communicate verbally.~~  
19 ~~The attorney for the child must have sufficient contact with the~~  
20 ~~child to establish and maintain an adequate and professional~~  
21 ~~attorney-client relationship.~~

22 ~~(g) Attorneys or their agents shall contact social workers,~~  
23 ~~probation officers, or other professionals associated with the~~  
24 ~~client's case, work with other counsel and the court to resolve~~  
25 ~~disputed aspects of a case without a contested hearing, and adhere~~  
26 ~~to the mandated timelines. The attorney for the child is not required~~  
27 ~~to assume the responsibilities of a social worker or to perform~~  
28 ~~services for the child that are unrelated to the child's legal~~  
29 ~~representation.~~

30 ~~SEC. 2. If the Commission on State Mandates determines that~~  
31 ~~this act contains costs mandated by the state, reimbursement to~~  
32 ~~local agencies and school districts for those costs shall be made~~  
33 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
34 ~~4 of Title 2 of the Government Code.~~